PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number
24207-10082

Pursuant to 240 OG 45 and the *Legal Framework For EFS-Web*, I hereby certify that this follow-on correspondence is being officially submitted through the USPTO EFS-Web system from the Pacific Time Zone of the United States on the local date shown below.

on July 19, 2007

Signature /Brian Hoffman/

Typed or printed name Brian Hoffman

Application Number	Filed
10/814,056	March 31, 2004

First Named Inventor: Niniane Wang

Art Unit	Examiner
2161	Chelcie L. Daye

This request is being filed with a notice of appeal.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.

☒ attorney or agent of record.
Registration number 39,713.

☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

/Brian Hoffman/
Signature

Brian Hoffman
Typed or printed name

(650) 335-2484
Telephone number

July 19, 2007
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 1 of 1 form is submitted.

ATTACHMENT TO THE PRE-APPEAL BRIEF REQUEST FOR REVIEW

Pre-appeal review is requested because the rejections in the April 19, 2007 Final Office Action are improper and without any factual or legal basis. Applicant respectfully requests that the Panel indicate that claims 1-4, 6-13, 15-24, 26-33, and 35-37 recite allowable subject matter.

I. Status of the Claims

Claims 1-4, 6-13, 15-24, 26-33, and 35-37 are pending and stand rejected. Claims 1-4, 6, 9-11, 15-24, 26, 29-34, and 35-37 are rejected under 35 USC § 103(a) as allegedly being unpatentable over Travis, U.S. Patent Application Publication No. 2004/0215607, in view of Linden, U.S. Patent Application Publication No. 2002/0019763. Claims 7-8 and 27-28 are rejected under 35 USC § 103(a) as allegedly being unpatentable over Travis in view of Linden and further in view of Barrett, U.S. Patent Application Publication No. 2003/0135490. Claims 12-13 and 32-33 are rejected under 35 USC § 103(a) as allegedly being unpatentable over Travis in view of Linden and further in view of Petropoulos, U.S. Patent No. 7,047,502.

II. Rejection of claims 1-4, 6, 9-11, 15-24, 26, 29-34, and 35-37 under 35 USC 103(a) in view of Travis and Linden

Claim 1 recites determining whether to update a content display based on a comparison between a current search query and a previous search query. Specifically, claim 1 recites a method comprising:

> obtaining from an index a search result associated with a current search query, the search result comprising a first article identifier;
> providing a content display comprising a second article identifier;
> determining whether to update the content display with the search result, the determining comprising **comparing the current search query to a previous search query associated with the content display**; and

responsive to a positive determination to update the content display, updating the content display.

The claimed method thus describes a search result associated with a *current* search query and a content display associated with a *previous* search query. The method determines whether to update the content display with the search result, and this determination comprises comparing the current search *query* to the previous search *query*. The claimed invention is beneficial, for example, because it avoids updating the display in situations where it is more distracting than useful to do so. Claims 21 recites similar limitations.

Travis and Linden do not teach or suggest determining whether to update the content display as claimed. Travis discloses a method and system for blending search engine results from disparate sources into one search result. In the rejection of claim 1, the Examiner maintains that Travis discloses the content display at Fig. 1B, but acknowledges that Travis is silent with respect to determining whether to update the content display with the search result.

Travis not only fails to show determining whether to update the content display, but further fails to teach or suggest even the concept of current and previous search queries. The Examiner states on page 9 of the Office Action of April 19 that result sets 260-1 and 260-2 correspond to the previous search query and the current search query, respectively, implying that one result set arrived prior to the other and is thus more current. However, this interpretation is fundamentally flawed because the claim recites comparing search *queries*, not result sets. The claims at issue clearly distinguish between a "search query" and a "search result," and the Examiner's conflation of these terms is improper.

Moreover, Travis says nothing about the temporal ordering of the result sets. Travis, when introducing the search result sets at paragraph 26, merely states that the results come from two search sources, and suggests nothing about their temporal ordering. Rather, the result sets

are completely interchangeable, unlike the current and previous search queries of the claimed invention. Merely because one result set *may* be received before another would not suggest the claim element to a person of ordinary skill in the art because there is no teaching that the temporal order of the search results even matters. Thus, since Travis neither teaches nor suggests current and previous search queries, it likewise cannot teach or suggest determining whether to update the content display by comparing the current search query to a previous search query, as claimed.

The Examiner asserts that Linden discloses determining whether to update the content display with the search result. Linden teaches using product viewing histories of users to identify related products. In the rejection of claim 1, the Examiner states that Linden discloses updating the content display at paragraph 0195, which describes how a user can use a checkbox to deselect a recommended item, and then select an "update page" button to view a refined list of recommendations from which the selected item has been removed. Paragraph 0136, also cited by the Examiner, describes how log items corresponding to products viewed since the last time a similar items database table was updated are incorporated into the table in the latest update. Thus, Linden essentially shows updating a web page when a user selects an "update page" button. Linden neither teaches nor suggests updating a display *based on a determination comparing previous and current search queries*, as claimed.

In sum, Travis and Linden, whether considered individually or together, fail to disclose comparing two queries, and also fail to disclose considering the temporal ordering of the queries (or of search results for that matter). Accordingly, a person of ordinary skill in the art considering the teachings of the references would not find the claimed invention obvious.

III. Rejection of claims 7-8 and 27-28 under 35 USC 103(a) in view of Travis, Linden, and Barrett

Barrett does not remedy the deficiencies of Travis and Linden described above with respect to independent claims 1 and 21. Barrett's invention operates within the context of a backend database and discloses a method of producing popularity rankings for web sites and other information within the database. Generally, Barrett's method monitors web sites selected by a user from a list of results in order to determine popularity, including using statistical techniques such as adaptive and blended inflation approaches to measure the changes to certain information's popularity over time. However, it does not teach or suggest comparing a current and a previous search query associated with a content display.

Thus, Barrett, whether taken singly or in combination with Travis and Linden, fails to disclose each and every limitation of the claimed invention.

IV. Rejection of claims 12-13 and 32-33 under 35 USC 103(a) in view of Travis, Linden, and Petropoulos

Petropoulos does not remedy the deficiencies of Travis, Linden, and Barrett. Generally, Petropoulos describes a way to display previews of information when a mouse cursor is over a particular region of a display, but does not teach or suggest determining whether to update a content display by comparing a current search query to a previous search query as claimed.

Thus, Petropoulos, whether taken singly or in combination with Travis, Linden, and Barrett, clearly fails to disclose each and every limitation of the claimed invention.

V. Summary

Based on the foregoing, Applicant respectfully submits that each of the pending rejections suffers from a clear deficiency. Accordingly, Applicant requests that the § 103 rejections of claims 1-4, 6-13, 15-24, 26-33, and 35-37 be withdrawn.

Respectfully Submitted,
Niniane Wang

Date: July 19, 2007

By: /Brian Hoffman/

Brian Hoffman, Reg. No. 39,713
Attorney for Applicants
FENWICK & WEST LLP
801 California Street
Mountain View, CA 94041
Phone: (650) 335-7607
Fax: (650) 938-5200